

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



September 25, 2003

Agenda ID #2785
Ratesetting

TO: PARTIES OF RECORD IN APPLICATION 02-10-025

This is the draft decision of Examiner Richard Clark. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on Examiner Clark and Michael Robertson, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

Richard Clark
Consumer Protection & Safety Division
505 Van Ness Avenue, Room 2205
San Francisco, CA 94102

Michael Robertson
Consumer Protection & Safety Division
320 West 4th Street, Suite 500
Los Angeles, CA 90013

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:vdI

Attachment

156416

Decision **DRAFT DECISION OF EXAMINER CLARK** (Mailed 9/25/03)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application by the San Bernardino Associated Governments (SANBAG) in cooperation with the Cities of Colton and San Bernardino for an Order authorizing construction of a grade separation structure between Hunts Lane and the tracks of Union Pacific Railroad in the City of Colton and the City of San Bernardino, San Bernardino County, California.
[PUC CROSSING NO. 541.00]

Application 02-10-025
(Filed October 22, 2002)

OPINION DISMISSING APPLICATION

Summary

San Bernardino Associated Governments (SANBAG) requests authority to construct an overhead grade separation at Hunts Lane (CPUC Crossing No. B-541.00) over the Union Pacific Railroad Company's (UP) main line tracks and in the Cities of Colton and San Bernardino, San Bernardino County. The Commission's Consumer Protection and Safety Division — Rail Crossings Engineering Section staff (RCES) requests that Application (A.) 02-10-25 be dismissed.

Discussion

SANBAG is the duly constituted transportation authority and transportation commission for San Bernardino County for the purposes of providing preliminary and final engineering studies and designs, environmental

documentation, right of way acquisition and construction for the subject overpass.

On January 15, 2003, SANBAG sent an email to RCES stating that it suspended the contract due to the loss in funding from the Traffic Congestion Relief Program (TCRP) and requested that the application be withdrawn.

RCES responded in an email to SANBAG outlining the steps necessary to withdraw the application. SANBAG did not file the request to withdraw the application. On May 9, 2003, RCES wrote a letter requesting SANBAG to withdraw A.02-10-025. On May 16, 2003, SANBAG replied in an email asking the application be kept active in case funding for the construction becomes available. On June 13, 2003, RCES issued another letter recommending that SANBAG withdraw the application and resubmit it at a later date due to funding uncertainty from TCRP. SANBAG was given 30 days to advise RCES if funding was available for the project. SANBAG has not responded to RCES's June 13, 2003 letter. Finally, on July 29, 2003, RCES wrote to SANBAG that RCES would recommend the application be dismissed.

In Resolution ALJ 176-3099, dated November 7, 2002, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. Since no protests were filed, this preliminary determination remains accurate. The Commission's Consumer Protection and Safety Division recommends that this application be dismissed without prejudice. Given these developments, it is not necessary to disturb the preliminary determinations made in Resolution ALJ 176 -3099.

Comments on Draft Decision

The draft decision of the Examiner in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of

the Rules of Practice and Procedure. Comments were filed on _____,
and reply comments were filed on _____.

Assignment of Proceeding

Richard Clark is the assigned Examiner in this proceeding

Findings of Fact

1. In letters dated May 9, 2003, June 13, 2003 and July 29, 2003, RCES notified SANBAG regarding dismissal of the application.
2. SANBAG has failed to prosecute the application in a timely manner due to funding uncertainty from the TCRP.
3. RCES recommends the application be dismissed.

Conclusion of Law

The application should be dismissed without prejudice.

O R D E R

IT IS ORDERED that:

1. Application (A.) 02-10-25 is dismissed without prejudice.
2. A.02-10-025 is closed.

This order becomes effective 30 days from today.

Dated _____, at San Francisco, California.